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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 YORDAN PETROV,

11 Plaintiff,

12 v.

13 HEBERT RESEARCH, INC., et al.,

14 Defendants.

CASE NO. C14-0754JLR

ORDER OF DISMISSAL

15 Before the court is Plaintiff Yordan Petrov's election to dismiss his state and
16 federal employment discrimination claims ("discrimination claims"). (Elec. (Dkt. # 96).)
17 The court GRANTS Mr. Petrov's request and dismisses his discrimination claims under
18 the conditions described below.

19 A jury trial in this case concluded on August 7, 2015, with the return of a partial
20 verdict. (*See* Verdict Form (Dkt. # 88); Dkt. # 83.) The jury found for Mr. Petrov on his
21 federal and state retaliation claims, awarded Mr. Petrov \$650,000.00 in compensatory
22 and punitive damages on those claims, and found Mr. Hebert personally liable for

1 wrongfully withholding Mr. Petrov's wages. (*See id.*) As to Mr. Petrov's discrimination
2 claims, however, the jury was unable to reach a verdict. (*See id.*) The court accepted the
3 jury's verdict and later declared a mistrial on Mr. Petrov's discrimination claims. (*See*
4 Dkt. ## 83, 89.)

5 In response to an order to show cause, on September 21, 2015, Mr. Petrov filed a
6 motion requesting a pretrial conference to set a trial date for retrial of his discrimination
7 claims. (Mot. for PTC (Dkt. # 91); *see* OSC (Dkt. # 90).) The court responded by
8 scheduling a status conference for October 1, 2015. (*See* Dkt.) Prior to the status
9 conference the court reviewed the record in this matter and determined that a retrial of
10 only Mr. Petrov's discrimination claims was impracticable because the events and harms
11 underlying those claims overlap significantly with the events and harms underlying Mr.
12 Petrov's retaliation claims. (*See, e.g.*, Pltf.'s Trial Brief (Dkt. # 67).) Given this overlap,
13 the court determined that Mr. Petrov's proposed retrial presented too great a risk of
14 resulting in damages for discrimination that would duplicate the damages already
15 awarded for retaliation. As such, the court informed the parties that it would not permit a
16 retrial of only Mr. Petrov's discrimination claims. (*See* Dkt. # 95.)

17 Instead, the court offered Mr. Petrov a choice between (1) dismissing his
18 discrimination claims, in which case the court would enter judgment on the jury's verdict,
19 or (2) retrying all of his claims together, in which case the court would vacate the jury's
20 verdict. (*See id.*; *see also* Verdict Form at 4 (asking the jury in Question No. 11 to state
21 the amount of Mr. Petrov's damages for retaliation that was duplicative of his damages
22 for discrimination).) Mr. Petrov chose the former course and now seeks the court's leave

1 to dismiss his discrimination claims. (*See* Dkt. # 95; Elec.) Mr. Petrov's election does
2 not state whether dismissal should be with or without prejudice. (*See* Elec.)
3 Nevertheless, the court notes that at the pretrial conference Mr. Petrov expressed concern
4 that he not lose the right to pursue his discrimination claims in the event post-trial
5 motions or an appeal results in a new trial on his retaliation claims. (*See* Dkt. # 95.)
6 Defendants did not oppose Mr. Petrov's requested dismissal. (*See id.*)

7 In light of the foregoing, the court GRANTS Mr. Petrov's request and
8 DISMISSES his discrimination claims under the following conditions: In the event post-
9 trial motions or an appeal results in a new trial on Mr. Petrov's retaliation claims,
10 dismissal of Mr. Petrov's discrimination claims will be without prejudice. If, however,
11 post-trial motions and any appeal result in a final judgment on Mr. Petrov's retaliation
12 claims, dismissal of Mr. Petrov's discrimination claims will be with prejudice. *See* Fed.
13 R. Civ. P. 41(a)(2) ("Except as provided in Rule 41(a)(1), an action may be dismissed at
14 the plaintiff's request only by court order, on terms that the court considers proper.").

15 Dated this 5th day of October, 2015.

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19 JAMES L. ROBART
United States District Judge
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